

ORIGINAL

LAW OFFICES

EX PARTE OR LATE FILED

SHOOK, HARDY & BACON LLP

GENEVA
HOUSTON
KANSAS CITY
LONDON
MIAMI

HAMILTON SQUARE
600 14TH STREET, NW, SUITE 800
WASHINGTON, D.C. 20005-2004
TELEPHONE (202) 783-8400 ■ FACSIMILE (202) 783-4211

NEW ORLEANS
OVERLAND PARK
SAN FRANCISCO
TAMPA
WASHINGTON, D.C.

Michael D. Berg
(202) 639-5646
mberg@shb.com

RECEIVED

SEP 25 2002

September 25, 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BY HAND DELIVERY

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Notice of Ex Parte Presentation
in CS Docket Nos. 98-120, 00-96 & 00-2

Dear Ms. Dortch:

On behalf of Gemstar-TV Guide International, Inc. ("Gemstar"), on September 25, 2002, Greg Simon of InfoTech Strategies and the undersigned met with R. Paul Margie, Legal Advisor to Commissioner Michael J. Copps, to discuss the multiple reasons why the Commission must include electronic program guide ("EPG") data in its definition of "program-related" material in CS Dkt. No. 98-120, consistent with earlier Gemstar filings.

In particular, we discussed the similarity between Microsoft-controlled Internet web browsers and cable-controlled EPGs; the wide discretion afforded the Commission by Section 614 of the Communications Act to define program-relatedness to include EPG data in the digital context, which would preclude cable operators from disabling EPGs that compete with their own EPGs; and the Commission's erroneous deviation, in 2001, from its announced intention in 1993 to apply the WGN test flexibly and in light of surrounding policy considerations, as the Commission did in finding that Nielsen "SID" codes are program-related under WGN although they meet none of its criteria and are not intended to be seen by viewers at any time. We also discussed the lack of any public benefit from allowing cable stripping of independent EPG data, and the several public interest benefits of requiring its undisturbed pass-through. For example, unlike cable-owned EPGs, independent EPGs lack any incentive to misuse the guide to discriminate against unaffiliated programmers.

No. of Copies rec'd
List ABCDE

at 2

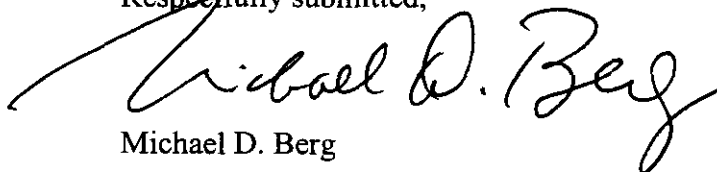
Ms. Marlene H. Dortch
September 25, 2002
Page 2

ORIGINAL

SHOOK, HARDY & BACON LLP

An original of this filing, and two copies for each proceeding listed above, are being submitted to the Secretary's Office in compliance with Section 1.1206 of the Commission rules.

Respectfully submitted,

A handwritten signature in black ink, reading "Michael D. Berg". The signature is fluid and cursive, with the first name "Michael" and last name "Berg" clearly legible. The middle initial "D." is smaller and less distinct.

Michael D. Berg

Attachment

cc: Chairman Michael C. Powell
Commissioner Kathleen Q. Abernathy
Commissioner Michael J. Copps
Commissioner Kevin J. Martin
Ms. Susan M. Eid
Mr. Paul Margie

Ms. Stacy Robinson
Ms. Alexis Johns
Ms. Catherine C. Bohigian
Mr. W. Kenneth Ferree
Mr. Rick Chesson